IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

A.O.NO.38 OF 2005

Devji Ramji Faria .. Appellant

vs.

The Municipal Corporation of
Gr.Bombay & Others .. Respondents.

Mr.G.S.Godbole, with Dinesh C. Shah, Advocate for the Appellant.

Ms.Geeta Joglekar for B.M.C.

Mr.P.P.Surve, Advocate for the Respondent Nos.2 and 3.

CORAM : A.S.OKA, J.

DATED : 28th February, 2005.

P.C. :

1. Heard Counsel appearing for the Appellant, Respondent No.1 and Respondents Nos. 2 and 3. After arguing the appeal for some time Shri Godbole, learned Counsel appearing for the Appellant has tendered affidavit dated 14.2.2005. In the said affidavit apology has been tendered on account of certain statement made in the earlier affidavit. Apology is accepted. It is further

stated in the affidavit that the Appellant wants to withdraw the suit and appeal unconditionally and he wants to apply for regularisation of suit structure within a period of four weeks from today. It is stated that the structure be protected for reasonable time within which the Authorities should be directed to consider the Application for regularisation. The learned Counsel appearing for the Respondent No.1 submitted that the suit structure cannot be regularised. The learned Counsel for the Respondent Nos.2 and 3 relying upon the judgement of a Division bench of this Court dated 23.7.2004 delivered in Writ Petition 1304 of 2004 submitted that if the Appellant is permitted to make application for regularisation,the Respondents Nos.2 and 3 should be heard by Respondent No.1 Corporation before passing any order on application for regularisation.

2. In my opinion, the request made by the Appellant appears to be reasonable as he has agreed to withdraw the suit unconditionally. In

so far as the objection raised by the learned Advocate for the Respondent No.1 is concerned, if application for regularisation is made, the Respondent No.1 Corporation will have to consider the same in accordance with law. Whether the structure can be regularised or not is for the concerned authority of the Respondent No.1 to consider in accordance with law. Hence I pass the following order:

(i) The affidavit dated 14.2.2005 filed by the Appellant is taken on record and marked Exhibit X1 for identification. Another affidavit of the same date filed by the Appellant is also taken on record and marked Exhibit X2 for identification. The apology tendered by the Appellant in both the affidavits is accepted. The undertakings in the Affidavit are accepted.

(ii) In view of what is stated in affidavit (Exhibit X1) the L.C.Suit No.4467 of 2004 and this appeal are dismissed as withdrawn with no orders as to costs.

(iii) If a proper application is made by the Appellant for regularisation of the suit structure within a period of four weeks from today to the concerned department/Officer of the Respondent No.1 Corporation, the same shall be decided within a period of eight weeks from date of receipt of the application. The Appellant will give intimation in writing to the Respondent Nos.2 and 3 immediately after making an application for regularisation. The Respondent Nos. 2 and 3 will be entitled to submit their objections, if any, to the application for regularisation with the concerned authority of the Respondent No.1 Corporation and the same shall be considered by the concerned authority of the Respondent No.1 Corporation while deciding the Application made by the Appellant.

(iv) The concerned authority of the Respondent No.1 Corporation, will decide the application within a period of eight weeks from the date of the receipt of the application and communicate the decision thereon to the Appellant immediately.

(v) To enable the Respondent No.1 Corporation to consider the representation/ application for regularisation, the parties will maintain statusquo as on today in respect of the suit structure for a period of 14 weeks from today.

(vi) if application as stated above is not made within a period of four weeks from today, the Respondent is at liberty to demolish the structure.

(vii) The trial Court will pass a formal order for dismissal of the suit on production of an authenticated copy of this order.

. Parties and the concerned Court to act on the authenticated copy of this order.

(A.S.Oka, J.)